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Veröffentlichungsversion / Published Version
Stellungnahme / comment

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Empfohlene Zitierung / Suggested Citation:

Bielefeldt, H. (2009). *The Durban Review Conference - why EU governments should participate*. (Policy Paper / Deutsches Institut für Menschenrechte, 13). Berlin: Deutsches Institut für Menschenrechte. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-317036>

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Imprint

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LAYOUT

iserundschmidt
Kreativagentur für PublicRelations GmbH
Bonn – Berlin

Policy Paper No. 13
March 2009

March 2007
ISSN 1614-2195 (PDF version)

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German Institute for Human Rights

The German Institute for Human Rights contributes to the promotion and the protection of human rights by means of research projects, policy advice, public seminars, expert discussions, lectures, educational programmes and library services. It was founded on March 8, 2001, following an unanimous decision by the German Parliament on December 7, 2000, to establish a national human rights institution (NHRI). The institute is an accredited independent NHRI in compliance with the UN "Paris Principles". One of the key functions of NHRIs is to act as a bridge between the international and national protection system.

The Durban Review Conference - Why European Governments Should Participate

At the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, governments committed themselves to take a number of practical measures against racism. A general review of these commitments is to take place at a United Nations Conference in Geneva in late April 2009. Known as the Durban Review, the planned conference has been the focus of fierce controversy. To contribute towards a better understanding of the situation, the present paper will discuss some of the background and history behind the dispute. While the German Institute for Human Rights is aware of the problems and risks involved in taking part in the conference, the Institute nevertheless recommends EU member states to participate in the Durban Review process.

1. Racism: A Test Case for Human Rights Policy

Racism is the negation of everything that human rights stand for. Article 1 of the Universal Declaration of Human Rights adopted in 1948 succinctly states, "All human beings are free and equal in dignity and rights". Racist ideologies, in contrast, are based on the assumption of hierarchies between various groups of human beings. Hence racism always involves discrimination, whereas the promotion of human rights requires a policy of active and consistent non-discrimination. Moreover, racist ideologies are incompatible with the concept of liberty since they reduce people to a real or hypothetical ethnic background, denying them all claim to individuality and individual freedom. Individuals and their freedom vanish where collective categories spuriously based on biological inevitability come into play. And finally, racism systematically denies human beings the right to be respected in their human dignity. Respect for human dignity, in contrast, is the ultimate principle underlying the philosophy of human rights.

Human rights therefore ban all forms of racial discrimination. This is reflected in a number of human rights documents, such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1950 European Convention on Human Rights and the Charter of Fundamental Rights of the EU (which has not yet formally come into effect). The 1965 International Covenant on the Eliminating All Forms of Racial Discrimination (ICERD) obliges member states to adopt effective measures for combating racism in the social, economic, cultural and other fields. In order to overcome racism, human

rights policies have increasingly targeted the more covert forms of racist discrimination, too, including indirect and structural discrimination.

It is important to bear in mind that this fundamentally anti-racist thrust has not always been clear in the history of human rights. It is true that the first declarations of human rights, linked to the democratic revolutions of the late eighteenth century, stated that all human beings were entitled to equal rights of freedom. While these declarations could well have served as a basis from which to combat racist ideologies and practices, for a long time it was typically assumed that "human beings" chiefly meant "European males", so that human rights policies often fell far short of the universalism on which human rights were, after all, predicated, at least in theory.

Let me cite some historical examples. In 1776 Thomas Jefferson announced in the American Declaration of Independence that "all men are created equal, that they are endowed by their Creator with certain inalienable Rights". Nevertheless he owned slaves all his life. There are indications that he was aware of this contradiction but could not find the strength necessary to act on it, either at a political or personal level. Immanuel Kant who contributed enormously to the conceptual clarification of normative universalism was also one of the first scholars to carry out a systematic categorization of "human races" on the basis of skin colour. Philosophical textbooks tend to cast a veil of silence over the great humanist's racist tendencies. In his youth Georg Wilhelm Friedrich Hegel was enthusiastic about the French Revolution and its declaration of human rights, but later he developed the cynical theory that colonialism and enslavement had "awakened more humanity among the Negroes". The genocide of indigenous peoples in South America he regarded as a historical necessity, saying that these cultures had "gradually vanished at the breath of the European spirit of activity". Anti-Jewish racist clichés also existed among the first enlightened European proponents of human rights. Although Voltaire was a courageous campaigner against fanaticism and obscurantism, he also stooped to virulent tirades against Judaism, whose members he collectively accused of deceit, dishonesty and usury.

Since universalism often came with an admixture of racist (and, incidentally, also sexist) prejudice, human rights philosophy, not to mention the actual human rights situation, fell sadly short of the ideal. A number of critics soon realized that this contradiction presented a problem for the credibility of human rights philosophy. In fact, the awareness of this contradiction became the driving force for a critical practice that even came to bear in the law courts. To take one example, only a few years after the American Declaration of Independence, black slaves took their cases to trial with some success, invoking the freedom

and equality of all people. One such court case led to the abolition of slavery in Massachusetts in 1783. This famous Quok Walker trial is paradigmatic for the development of human rights generally because it typifies the fundamental insight that the ideal of universal human rights is contingent on the rejection of all discriminatory mechanisms of exclusion. The idea of universalism can only come to bear if the human rights situation is under continual review and contradictions between ideal and practice are critically exposed.

Fundamental contradictions remained even after human rights were adopted into international law following World War II. The experience of state totalitarianism, two world wars, and in particular the horror of the holocaust moved the international community to pass the Universal Declaration of Human Rights in 1948. When the preamble refers to "barbarous acts which have outraged the conscience of mankind", the wording specifically alludes to the Nazi genocide of the Jews. Yet at the same moment in history virtually the whole of sub-Saharan Africa and large parts of Asia were still subject to European colonial mandate. In other words, international law hailed the universal right to freedom and equality while international politics was still predicated on colonialism and Eurocentric pretensions of superiority. The peoples under European rule had no voice in United Nations consultations on the Declaration of Human Rights, and of course they had no vote, either. Removing this glaring inconsistency and hence dismantling European colonialism and the racist beliefs underpinning it became the main challenge in the time that followed. It was to prove a crucial test of credibility for the human rights movement and human rights policy in general.

Thus, the development of human rights has always been, and will always be, part of an unfinished societal learning process. Within that learning process, the fight against racism, beside its practical significance, has a *high symbolic value*. In the international arena, the countries of the southern hemisphere continue to regard the extent to which European nations are prepared to critically examine their own historical and present-day racist transgressions as a crucial test of credibility on human rights policies in general. It would not be exaggerated to say that the chance of achieving a constructive international dialogue on human rights largely depends on the degree to which European nations in particular engage with the issues surrounding racism and embrace effective ways of overcoming racism.

2. The 2001 Durban World Conference Against Racism

No other UN summit in the past twenty years has been as controversial as the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held in the South African city of Durban from 31 August to 8 September 2001.

Heated debates erupted even at the preparatory stage. The climax came when the American and Israeli delegations walked out of the conference. Positions at the separately held forum of non-governmental organizations (NGOs) were also sharply polarized. Opinions on the conference and its results still vary wildly and range from enthusiasm to condemnation. According to its proponents, the Durban conference marked a historical breakthrough and a long overdue expansion of the human rights agenda, while others see it as a political disaster that lastingly damaged the credibility of international human rights policy. Both views have their reasons.

The very location of the conference sent out a positive signal. Only a few years previously South Africa, under the leadership of Nelson Mandela, had peacefully thrown off the yoke of apartheid. The racist system which categorized people according to the colour of their skin had penetrated into all sections of society and had virtually developed into a *raison d'état*. That a global conference was taking place in the recently democratized South Africa was thus supposed to signalize the dawn of a new age without racism.

The comprehensive document adopted at the Durban conference, called the Durban Declaration and Programme of Action, clarifies important issues, details obligations and lists strategies towards a world without racism. The Declaration condemns all forms of racist ideology, whether based on (alleged or real) biological, cultural or religious differences and explicitly rejects all theories that propound the existence of distinct "human races". Apartheid, slavery, the slave trade and colonialism are denounced as dehumanizing practices deriving from racist ideologies. A frequently neglected subject, the rights of indigenous peoples receive extensive coverage, as do the rights of people of African descent as well as the Roma population. The situations of refugees, migrants and victims of human trafficking are also addressed in detail. The ideal of "inclusive societies" is proposed as an alternative to racist discrimination and exclusion. The necessity of including a gender perspective in anti-racism strategies is emphasized, thus raising awareness of the intersection of racist and sexist discrimination. The Programme of Action part of the final document contains an extensive list of suggested policy strategies encompassing the educational, media, legal and social spheres, as well as demands for the ratification of human rights instruments. Lastly, the document urges countries to establish and implement national action plans against racism.

Generations of Africans have been oppressed by racism, colonialism and slavery, and indeed many still suffer from the consequences. Broaching this issue, the countries in the southern hemisphere introduced their collective experience of injustice to the international human rights debate. Never before had a United Nations document on human rights

examined racially motivated colonialism and slavery in such detail, and never before had the practices been condemned as crimes against humanity in such clear terms. As countries in the southern hemisphere thus once again claimed "ownership" in human rights, the historical contradiction arising from the emergence of human rights ideals at a time when most of the population of Africa and Asia was still subject to colonial rule could be addressed and at least partially resolved. In this respect the Durban conference contributed towards a greater internal consistency and credibility of international human rights policy - a considerable achievement.

It is bitterly ironic that the opposite is also true. New contradictions and rifts opened up in and around Durban. Many of the countries that flew the flag of anti-racism - including Iran, Libya, Cuba and Zimbabwe - had been ruled by dictators for decades and were notorious for human rights abuses. But what most tarnished the credibility of the conference was the racist and, more specifically, anti-Semitic note repeatedly struck in its context. Draft texts presented prior to the conference contained language equating the suffering of the Palestinian people with the holocaust, so there was great concern that the conference might end up denying the unique nature of the Nazi genocide. Some of the language proposed was also reminiscent of a 1975 United Nations resolution which castigated Zionism as a form of apartheid. This resolution, however, was explicitly revoked by a large majority of votes in 1991.

The worst of anti-Semitic attacks cloaked as anti-Zionism occurred at the preliminary regional conference of Asian governments, which was held in February 2001 in Tehran, of all places. Anti-Semitic episodes also overshadowed the NGO forum that took place in Durban parallel to the main conference. The then UN High Commissioner for Human Rights, Mary Robinson, accordingly rejected the final declaration of the NGO forum.

The Durban Declaration and Programme of Action, by contrast, is free of anti-Semitic language. Article 58 of the Declaration clearly states that "We recall that the Holocaust must never be forgotten". With regard to the conflict in the Middle East, Article 63 of the Declaration explicitly recognizes the right to security of all states in the region, including Israel. What is strange, however, is that the Middle East conflict is the only regional conflict of this kind to be addressed in the conference document, and that anti-Semitism is not included in the section dealing with victims of racism (i.e. in chapter II of the Programme of Action). In the end the impression is that while anti-Semitism is mentioned in the final document it is considered something of an incidental question. It is certainly not accorded the attention appropriate to an issue so closely involved in the fight against racism.

In the light of all these factors it is extremely difficult to arrive at an overall evaluation of the conference. Durban represents both important historic breakthroughs and intolerable

hypocrisy. The conference developed the model of an “inclusive society” without racism at the same time as it set up new lines of demarcation. The analysis of colonialism and slavery in the declaration does raise awareness of historical injustice, paving the way for countries in the southern hemisphere to enhance their ownership of the human rights agenda. Yet this must be contrasted with the unacceptably weak language used in context with the holocaust - contexts that are far too rare and isolated. All in all, it seems fair to say that the Durban Declaration and Programme of Action represents an important but transitional stage in the protracted battle against racism.

3. The Durban Review: To Go or Not to Go?

Interest in the Durban conference reawakened in December 2006 when the General Assembly of the United Nations decided to hold a follow-up conference to evaluate progress towards the goals set up in the Durban Programme of Action. The conference is currently scheduled to take place in Geneva from 20 to 24 April 2009.

The controversy that overshadowed the 2001 Durban conference reignited during preparations for the review process. One source of contention is the question whether the Middle East conflict should be discussed at the conference. No other regional conflict is mentioned in the preparatory draft documents. A further potentially controversial topic that did not play a large role in Durban is “defamation of religions”. The Organisation of the Islamic Conference has called for outlawing defamation of religions as a form of racism, whereas Western states reject this as a potential threat to freedom of expression.

The expected ideological escalation has also led to talk of boycotting the review process. For instance, in July 2008 the French writer Pascal Bruckner, concerned that the Durban review conference might provide a stage for authoritarian regimes to launch one-sided attacks on Israel, started collecting signatures in favour of a boycott. In fact, the internet is full of calls for a boycott of the conference.

In January 2008 Canada was the first country to announce it would not be taking part. Israel followed in November of the same year, naming concern about one-sided attacks as its reason. The Bush administration had expressed its scepticism at the whole process by withholding financial resources. After the new government led by President Obama had initially entered preliminary negotiations it then announced that it would not be attending the conference unless substantial changes were made to the preliminary documents. The current situation indicates that the EU states will probably participate in the Durban Review, although several EU members - the Netherlands, United Kingdom, Italy and Denmark - have signaled that they would at least consider the option of a boycott. It is thus not yet

possible to predict whether the EU as a whole will take part in the review conference in Geneva.

UN High Commissioner for Human Rights, Navanethem Pillay has repeatedly pointed out that it is better to take a proactive stance and use the review conference as an opportunity to express criticism than to turn one's back on the event.

She reaffirmed the invitation and urgently appealed to those governments that had already announced a boycott to reconsider their decision. In a number of speeches and articles, Pillay argued that governments owed it to the victims of racial discrimination to concentrate on overcoming racism and not engage in ideological trench warfare.

It is certainly true that there are political risks to taking part in the conference. It is unfortunately entirely conceivable that an explicitly or covertly anti-Semitic tone might arise at the conference. In light of some of the experiences made in and around Durban 2001, it is even possible to imagine worst-case scenarios whereby the only way of preserving credibility in the human rights policy would be to abandon the debate or even, as a last resort, to close the conference.

However, it would be a great mistake to boycott the conference before it has even started - this would merely send out the wrong signal. A boycott based on fear of ideological polarization would work as a self-fulfilling prophecy and accelerate that very polarization. If the impression were created that the European nations - or at least some of them - rejected out of hand any involvement in the complex debate on combating racism, this would be grist to the mill for authoritarian regimes in the Robert Mugabe mould, who deliberately exploit the credibility gap arising from the initially Eurocentric history of human rights in order to forestall criticism of their own devastating human rights record.

A European retreat to the supposedly safe position of "splendid isolation" on human rights issues would have a lasting and negative impact on chances of reaching a consensus on human rights in the future. The result could be a fragmentation of the human rights agenda, which would in turn significantly undermine existing instruments - inadequate though they often are - for implementing human rights.

Human rights policy has always been riddled by massive contradictions, especially on the international stage. There is therefore no alternative to the thorny path upon which humanity has covered but a small distance. What is at stake is the credibility of human rights, so contradictions must be identified, the gaps between ideal and reality must be closed. Or at least we must try. The upcoming Durban Review conference in Geneva is no exception. A

critical attitude will recognize that abuses can occur both at home and abroad. European governments can only benefit from a self-critical examination not only of their colonial past, but also of present-day racist discrimination within their borders. For one thing, this strengthens their position when addressing human rights issues in countries in the southern hemisphere, ranging from authoritarian single-party dictatorships, "ethnic cleansing" to the point of genocide, to a sometimes misguided "solidarity" among neighbouring states.

Whenever we address racism and related discrimination, the genocide of European Jews must be a constant reminder and warning. It is a reminder to combat all tendencies to deny the unique nature of the Nazi holocaust. It is a warning to take every opportunity to participate in the fight against racism, including the Durban Review.